

Appn. No. 10/678,871
Supplemental Amendment
October 12, 2006

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REMARKS

I. Status of the Claims

Claims 1-4, 6-17, 78, 80-83 and 85 were previously pending in the current application. By the instant amendment, claim 1 is amended. Favorable reconsideration of the application is respectfully requested in light of the foregoing amendments and the following remarks.

II. Summary of Examiner Interview

Applicant thanks the Examiner for the courtesies extended during the telephonic interview conducted on September 11, 2006 in which the Examiner and Applicant's representatives discussed the Real Estate Library Reference ("the Reference"). In discussing the Reference, the Examiner suggested that the post-dated check to a charity meets the claim limitation of the up-front payment to the seller, and the agent's commission, which is implied in the Reference, meets the claim limitation of the second consideration provided to the agent. As discussed with the Examiner, the present paper addresses the reference and such arguments.

III. The Claims Are Patentable

A. Seller's right to retain the upfront payment conditioned upon the sale condition not being met

Claim 1 recites that the seller's retention of at least a portion of the up-front payment is conditioned on a sale condition not being met. For example, in an illustrative embodiment, the sale condition is the sale of the property. In such an example, if the house is not sold by the agent, then the seller can keep the up-front payment. Claim 1 recites:

granting the seller a right to retain at least a portion of the upfront payment conditioned upon the sale condition not being met by the end of the defined period of time, wherein the seller retains a

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least a portion of the upfront payment when the sale condition is not so met

(emphasis added)

In contrast, the Real Estate Library Reference specifically states on page two that the realtor says he “is out \$500 cold hard cash in 60 days, whether I ever sell your house or not.” (emphasis added) In fact, the Real Estate Library Reference specifically states on page two that the uniqueness of the described arrangement is that the payment to the seller “isn’t tied to the sale of your house.” Therefore, in the Real Estate Library Reference, the \$500 goes to the charity regardless of any sale conditions. There is no sale condition associated with the seller’s retaining at least a portion of the upfront payment and the agent’s receiving second consideration from the Seller. Accordingly, Applicant respectfully submits that the Reference fails to teach or suggest this limitation and that the claims are in condition for allowance.

B. The Same Sale Condition

The present invention as defined by claim 1 also recites that the second consideration received by the agent from the seller is conditioned upon a sale condition being met. Taken with the limitation regarding the seller’s retention of the up-front payment, it is clear that the same sale condition triggers the second consideration to the agent and the retention of the up-front payment by the seller. In this regard the claim recites:

receiving second consideration from the seller conditioned upon a sale condition for the property being met during a defined period of time; and

granting the seller a right to retain at least a portion of the upfront payment conditioned upon the sale condition not being met by the end of the defined period of time, wherein the seller retains a least a portion of the upfront payment when the sale condition is not so met

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(emphasis added)

The Examiner has pointed to the agent's commission as the second commission. As part of such argument, the sale condition would be the sale of the property. To meet the claim limitations, that same sale condition must be the basis for triggering the seller's right to retain at least a portion of the up-front payment; however, this is not the case.

The Examiner has considered the post-dated check as the up-front payment. As discussed above, there is no condition on the post-dated check. In the Reference, the realtor states he "is out \$500 cold hard cash in 60 days, whether I ever sell your house or not." (emphasis added) If the post-dated check is not conditioned on the sale of the house, then the same sale condition does not trigger the agent receiving the second consideration and the seller retaining the up-front payment. In the Reference, there is no one sale condition that triggers both the receipt of the second consideration by the agent from the seller and the seller's right to retain a payment.

The Examiner has pointed to the following statement on page 1 of the Reference as indicating a sale condition applies to the seller's right to retain the up-front payment.

If we aren't in Escrow by then [i.e., the end of 60 days], you cash the check.

Applicant respectfully submits that this statement does not teach or suggest conditioning the seller's retaining a portion of the up-front payment on any sale condition. This statement is used to confirm the uniqueness of the guarantee. The Reference emphasizes that all other incentive programs involve payment to the seller only at the close of escrow. As the Reference says explicitly on page 2:

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Every other guarantee I've seen says that the agent will pay you at the close of escrow, meaning that if the house never sells, the agent isn't out anything.

The statement on page 1 simply confirms the difference between the referenced other guarantees and the guarantee being described in the Reference. With the guarantee described in the Reference, the seller gets the money even if the seller is not in escrow at the end of 60 days; payment is not conditioned on whether the seller is in escrow. Being in escrow is not a sale condition upon which retention of the up-front payment is conditioned.

Moreover, even if it is assume, arguendo, that the seller's right to retain the up-front payment is conditioned on being in escrow, being in escrow is NOT the same condition as sale of the house, which is what the Examiner points to as the sale condition upon which the agent's second consideration is based. The claim requires the same sale condition triggers both the receipt of the second consideration by the agent from the seller and the seller's right to retain a payment. This is not the case in the Reference. Accordingly, Applicant respectfully submits that the claimed invention is neither anticipated nor rendered obvious by the Reference for this additional reason.

C. No Up-Front Payment

Claim 1 recites that the first consideration includes an "up-front" payment to the seller. In the Real Estate Library Reference there is no such up-front payment to the seller.

The Real Estate Library Reference specifically teaches away from giving an upfront payment by saying that the seller receives a post-dated check. Even if the post-dated check could be considered up-front consideration, it is not an up-front payment. Furthermore, it is not a payment to the Seller, as required by the claims, but rather a payment to charity. Thus, Applicant respectfully submits that the Reference also fails to teach or suggest the up-front

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payment limitation and therefore, that the claim are neither anticipated nor rendered obvious by the art of record.

Applicant respectfully submits that the claims as amended are in condition for allowance. Accordingly, Applicant respectfully requests reconsideration of the present application, in view of the amendments and remarks provided herein. If the Examiner disagrees, he is respectfully requested to contact the undersigned at the number listed below. Although no fees or charges are believed due in connection with this amendment, fees or charges necessary in connection with the present amendment are hereby authorized to be charged to Deposit Account No. 19-4709.

Respectfully submitted,



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